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Order 2000-1-8



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 7th day of January, 2000

Served: January 7, 2000

Petitions of

AMERICAN AIRLINES, INC.

and

BRITISH AIRWAYS PLC

for review of staff action regarding the joint
application of American Airlines and British Airways
under 14 CFR Part 212 for statements of
authorization (reciprocal code sharing) and under 49
USC 40109 for related exemption authority

Docket OST-1999-6507 -- 17

ORDER ON REVIEW

Summary

By this order, we grant the captioned petitions of American Airlines and British Airways for review of an **evidentiary** request we issued in connection with the captioned joint application and, on review, we have decided to modify that **evidentiary** request.

Background

On November 15, 1999 and amended on November 16, 1999, American and British Airways submitted a joint application for approval of reciprocal code sharing and related exemption authorities. On December 1, 1999, United Air Lines, Continental Air Lines, and Delta Air Lines filed objections to the application. American and British Airways (jointly) and Houston and the Greater Houston Partnership filed responses to those answers. Subsequently, the State of Maryland filed an answer in support of the joint application.¹

By letter dated December 14, 1999, the Director, Office of International Aviation, requested the joint applicants to submit additional data and **evidentiary** information to complete the

¹ The State of Maryland's answer was accompanied by a motion for leave to file an otherwise unauthorized document. We will grant the motion.

application. The letter stated that upon the Department's determination that the application is complete, the Department would establish a procedural schedule for comments and such other responsive pleadings as may be necessary to act on the application.

Petitions/Responsive Pleadings

On December 27, 1999, American and British Airways filed separate petitions for review of the evidence request in Docket OST-99-6507 made by the Director of the Office of International Aviation on December 14, 1999. United Air Lines, Inc. and Delta Air Lines filed answers to the petitions.²

American requests that the Department narrow the scope of the traffic and fare data requested to reduce the level of detail required and the scope of services that must be included in the data reported. American proposed specific modifications to the data requested which it believes will provide the Department with the information necessary to evaluate the application properly without unduly burdening the applicants.

British Airways argues that the application is sufficiently complete as originally filed, and that the request for additional information is inconsistent with U.S. obligations under Bermuda 2 and should be withdrawn. Should the Department nonetheless require the filing of additional information, British Airways urges that the amount and detail of material requested be reduced. British Airways attached to its petition its specific suggestions for modification of each of the items requested in the Director's December 14 letter. Generally, British Airways maintains that (1) any studies, reports, and analyses requested be limited to the one-year period beginning December 14, 1998, and be limited to those produced by or for the BA Alliance Department; (2) the information regarding other code-sharing relationships is too broad and should be limited to arrangements directly related to the authority requested in the code-share application; and (3) the seat availability and fare data requested is unduly burdensome.

United and Delta maintain that the Department correctly determined that additional information is necessary in order to make the required public interest evaluation of the carriers' requests for code-sharing authorizations and urge the Department to ensure that such information is filed before acting on the American/British Airways application. They leave to the Department's determination resolution of the modifications suggested by the joint applicants.³

² Under the Department's regulations, answers to the petitions would normally have been due on January 6, 2000. By Notice dated December 28, 1999, the Department shortened the period for filing answers to the petitions to 3 p.m. on January 3, 2000.

³ Both carriers also reiterate and expand upon their objections to the joint application. This order deals solely with the issue of additional information necessary to consider the joint application. We will address the substantive arguments raised by the carriers when we act on the merits of the application.

Decision

After careful consideration of the matters addressed in the petitions for review, we have decided to modify the December 14, 1999 evidentiary request.

The evidence request attached to the Director's December 14, 1999 letter to the parties enumerated nine specific additional items for the parties to supply in order for the Department to proceed with its consideration of the joint application. In the case of any application for code-sharing authority, the Department must make a determination of whether approval of the application is consistent with the public interest. In making such a determination, it is fully within the Department's power and obligation under the statute to seek whatever additional information may be necessary to make that evaluation. Indeed, as noted in pleadings in this docket, the proposed arrangement between American and British Airways involves the two major U.S. and British carriers in the U.S.-UK market, a non open-skies limited-entry aviation regime. Under these circumstances, we find that the Director was correct in determining that additional information should be submitted for the Department to make its public interest evaluation of the application. Contrary to the objections raised in this proceeding, nothing in our aviation agreements and understandings with the United Kingdom precludes the Department from requiring, or obviates the need for the Department to require, such information.

That said, we have carefully considered the specific modifications to the requested evidentiary material suggested by American and British Airways. In doing so we have been guided by the principle that whatever changes we might make we must nevertheless continue to ensure an adequate record for decision. Against this background, we have determined that we are in a position to agree with the applicants that a number of modifications to the evidentiary request would not be inconsistent with the public interest.

In modifying the evidentiary request, we have significantly limited the historical reach and geographic scope of the information requested. Specifically, with respect to the studies, reports, surveys and analyses requested, we have limited our request to those studies, etc. that were produced since August 1998, shortly before British Airways joined the OneWorld alliance. We also limited such studies, analyses, etc. to those produced by or for American or British Airways that were used by the airlines in reaching any marketing/cooperative service agreement or arrangement between them, including the current code-share agreement for their proposed joint services. In addition, we have limited our request in item III.5. regarding the carriers' arrangement with other third-party airlines to those arrangements that affect transatlantic traffic flows. We also emphasize that this request is directed toward identifying existing relationships and those that the carriers are actively considering within the next year. Finally we have (1) eliminated the requirement in item IV.7. that would require the carriers to provide an assessment of the effect of increased traffic flows on seat availability and fares in gate-to-gate markets; and

(2) adopted the majority of the changes suggested by American and British Airways to item V.9. to simplify the level of detail and scope of historical traffic **reported**.⁴

For the convenience of the parties, we have itemized the changes to the requested **evidentiary** material in the attachment to this order.

ACCORDINGLY,

1. We grant the petitions for review of American Airlines, Inc. and British Airways Plc and, on review, modify the **evidentiary** material **required** in the December 14, 1999 letter from the Director, Office of International Aviation as set forth in the attachment to this order;
2. To the extent not modified by this order, we affirm the action of the Director, Office of International Aviation seeking additional information from the joint applicants in the captioned proceeding;
3. We grant the motion of the State of Maryland for leave to file an otherwise unauthorized document; and
4. We will serve this order on American Airlines, Inc., British Airways Plc, Delta Air Lines, Inc., United Air Lines, Inc., Continental Airlines, Inc., the State of Maryland, the Houston Parties, the Ambassador to the United Kingdom in Washington DC, the U.S. State Department (Office of Aviation Negotiations), and the Federal Aviation Administration.

By:

A. BRADLEY MIMS
Deputy Assistant Secretary for
Aviation and International Affairs

(SEAL)

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http://dms.dot.gov/reports/report_aviation.asp

⁴ In this regard, we do not agree with the parties that the data reported should be restricted to those points included in the carriers' code-share application. Historical data for other points served by the carriers is necessary to analyze the competitive impact of the proposed range of code-sharing services.

ITEMIZED CHANGES TO DECEMBER 14 EVIDENTIARY REQUEST

I.1. We limit the request to copies of agreements and arrangements that involve the creation or implementation of the proposed code-sharing relationship.

I.2. No change. Both parties agree to submit an **unredacted** version of Appendix D of their code-share agreement.

II.3. We limit the time period for filings in response to this item to the period subsequent to August **1998**. The documents to be supplied should be those produced by or for American and British Airways in reaching the subject agreements/arrangements (the **1997** marketing alliance, special prorate agreement, **oneworld** alliance arrangement, and the carriers' code-share agreement).

II.4. The material requested is limited to a description of how approval of the proposed code-share service would affect the cooperation and coordination between American and British Airways in items A-E. The carriers should also provide the requested description of how the alliance policies in items A-E have contributed to the changes in historic traffic and revenue reported in response to item 9. The carriers may file separate answers or may file a joint answer to some or all the items.

III.5. The request regarding marketing arrangements is applicable only to those that affect transatlantic traffic flows. In terms of future relationships, the request is limited to those that the parties are contemplating for services in the next **12-month** period and that would affect transatlantic traffic flows.

III.6. We limit the time period applicable to this item to the period subsequent to August **1998**.

IV.7. This item should now read as follows:

Provide a traffic and revenue forecast for all markets that will be affected by the proposed code-share arrangement. Identify the extent to which traffic and revenue forecast for AA/BA will be stimulated versus diverted from other U.S. carriers (by carrier) should the code-share application be approved.

IV.8A. This item is now incorporated as part of item IV.7.

IV.8B. We limit the time period applicable to this item to the period subsequent to August **1998**.

V.9. This item should now read as follows:

Please provide directional origin and destination data (100% census) for all itineraries operated by American and/or British Airways (exclusively, jointly, or with third parties) that involve a transatlantic segment between a U.S. gateway and London. This includes all behind-beyond markets that use London as a transatlantic gateway.

Data submitted should be submitted by quarter from the second quarter of 1998 through the latest available period.

Directional-itineraries consisting of more than **three** segments may be omitted.

Records should be grouped by airport origin, airport destination, directionality, number of directional coupons, operating carrier,¹ and the fare class² of the itinerary's transatlantic segment. For each grouping provide **O&D** nonstop mileage, passengers, **rpms**, and revenue. Records in each grouping should be broken into \$30 fare increments.³

Requested Record Layout:

Airport-level Origin
Airport-level Destination
Direction (inbound/outbound)
Number of Coupons
Carrier (AA, BA, or 99)
Transatlantic Segment Fare Class
Fare Increment
Nonstop Mileage
Total Passengers
Total RPMs
Total Revenue

¹ If a directional itinerary is operated in part by AA, but not BA, the carrier reported should be AA, regardless of third-party involvement. Likewise, if a directional itinerary is operated in part by BA, but not AA, the carrier reported should be BA, regardless of third-party involvement. If both AA and BA have operated segments in the same directional itinerary, please provide the carrier as 99 to signify an AA/BA interline (disregard third-party involvement). American Eagle flights should be treated as an American flight.

² Fare classes should consist of first class, business class, coach full fare, coach APEX, coach promotion/deep discount, and frequent flyer. Fare classes not specifically listed here should be included in whichever listed fare class is most appropriate.

³ Top of \$30 fare increment preferred. For example, \$300 to signify that passengers in grouping paid between \$271 and \$300.